





In the Supreme Court of the United States.

OCTOBER TERM, 1897.

JUAN PEDRO CAMOU, APPELLANT,
v.
THE UNITED STATES. } No. 28.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

STATEMENT, ABSTRACT, AND BRIEF.

On the 3d of December, 1891, JUAN PEDRO CAMOU, claiming to be the owner in fee of the private land claim situated in the county of Cochise and territory of Arizona, commonly known as the SAN RAFAEL DEL VALLE GRANT, filed his petition for the confirmation of the same, alleging it to contain a little over twenty thousand acres.

On the 21st day of February, 1893, plaintiff filed an amended petition, upon which the cause was tried. (R., 6-9.)

There does not appear to be an answer on behalf of the government in the record. As my recollection now

serves me, the answer of the government was merely a general denial of the allegations of the petition, and under the act of March 3, 1891, the court was bound to investigate the matter whether or not any answer had been filed on behalf of the United States, and treating the answer of the United States as a general denial the case was tried.

In the amended petition it is alleged that the petitioner is the owner in fee of the tract of land in the county of Cochise, in the territory of Arizona, in the San Pedro Valley, on both sides of the river, between the range of mountains known as the Huachuca mountains and the range known as the Mule mountains, the southern boundary line being about six miles north of the southern boundary of the territory of Arizona, its northern boundary about ten miles southwesterly from the city of Tombstone and about three miles southerly from the old town of Charleston.

Then follows the description of the grant as contained in the survey made by Mr. Roskrue.

Plaintiff claims the land by purchase under divers mesne conveyances from the original grantee, and alleges that at the date of the acquisition of said territory by the United States said title was complete and perfect.

That the grant was made and patent issued therefor to Rafael Elias under and by virtue of article 11 of the sovereign decree No. 70 of the general congress of the republic of Mexico of the 4th of August, 1824, and said patent was issued to said Rafael Elias on the 25th of December, 1832, by José María Mendoza, treasurer-general of the state of Sonora, in accordance with the

above decree and law No. 30 of the 20th of May, 1825, of the state of Sonora and Sinaloa, regulating the system of selling the public lands.

That the condition imposed upon the grantee and his successors was that they should keep, settle, and protect said lands, without their being deserted or abandoned for any time, and in case total abandonment took place for three consecutive years, and anyone petitioned for them, upon the fact being proven, they would be declared public lands and regranted in favor of the highest bidder, except when the abandonment be occasioned by the notorious invasion of the public enemies.

It is alleged that the grantors and predecessors in interest of the petitioner, upon issuance of the patent, duly entered into the possession of said granted premises, settled and occupied the same according to said conditions.

That no breach of the conditions of said grant was ever claimed by the republic of Mexico; that said grant had been duly located and recorded in the archives of Mexico, prior to the 25th day of September, referred to in article VI of the Gadsden treaty; that the grantors and predecessors in interest of the petitioner were the owners of said grant at the time of the adoption of the Treaty of Guadalupe Hidalgo and were citizens of the Mexican republic. That the grant in question, according to the survey and map made by George D. Roskrueg on June 21, 1891, contains 20,034.62 acres, which map is filed as an exhibit in the case.

Several persons are named in the petition as being in possession of portions of said grant otherwise than by lease or permission of the petitioner.

It is further alleged that the claim had been presented to the surveyor-general of the territory of Arizona, pursuant to an act of congress, approved July 15, 1870, and Departmental Instructions of January 5, 1877; that under said authority the surveyor-general examined into the validity of said grant, authorized a survey thereof, reported thereon favorably, and recommended the confirmation of said grant by congress. The petitioner prays that the validity of the grant may be inquired into by the court. (R., 6-9.)

This claim is based upon a certified copy of a *testimonio* (Spanish, see R., 96—translation, see R., 104) offered in evidence by the plaintiff, from which it appears that Joaquin Elias, on behalf of Don Rafael Elias, presented his petition to the treasurer-general of the state of Sonora, stating that, needing land for stock purposes, he asked for the public lands adjacent to the ranch of San Pedro, within the jurisdiction of Santa Cruz, as far as the place called Tres Alamos, binding himself to make good to the nation the duties which belong to it, and whatever else might be just to acquire the title deeds and a confirmation thereof. This petition is dated at Arizpe, March 12, 1827. (R., 105.)

On July 1, 1827, the treasurer-general, Nicolas Maria Gaxiola, issued an order directed to the *alcalde* of the police of Santa Cruz, empowering him, without prejudice to any third party who might have a better right, and previously summoning the adjacent owners, to proceed to survey, appraise, and offer at public sale for thirty consecutive days, the lands indicated in the foregoing

petition, acting strictly in all things in accordance with the sovereign decree of the constituent congress of the state, No. 30, of May 20, 1825, and the regulations attached to it, and upon completing the proceedings he should transmit the same to the treasury, giving notice to the bidders that they may present themselves, either in person or by attorney, at the auction that would take place after the three public auctions provided by law. (R., 105.)

In obedience to said order, at the *presidio* of Santa Cruz, on August 20, 1827, Pablo Fraijo, constitutional *alcalde* of the police of the *presidio* of Santa Cruz, executed the act of obedience, wherein he states that he would go to the ranch of San Pedro in order to proceed with the survey of the lands petitioned for—that is, those that are petitioned for by the said Rafael Elias, whose survey must be made separately from those that have to be made for the other petitioners, whose entries are made jointly and appear in the copy of the writing with which these proceedings begin. (R., 106.)

[NOTE AND EXPLANATION.—It is proper to explain that the original petition under which were made this grant (San Rafael del Valle) and the grant in controversy in case No. 30, Robert Perrin *v.* United States (San Ygnacio del Babocómari), and also the San Juan de Las Boquillas y Nogales grant, which has not yet been tried by the Court of Private Land Claims, was a joint petition on behalf of Rafael Elias, Ygnacio Elias Gonzales, Nepomuceno Felix, and Ygnacio and Eulalia Elias for the "public lands adjacent to the ranch of San Pedro,

within the jurisdiction of Santa Cruz, as far as the place called Tres Alamos." Attached to the *expediente* on file in the archives at Hermosillo in the San Ygnacio del Babocómari grant is the original petition signed by Joaquin Elias for all of these parties who are named in the petition. (See case No. 30. Robert Perrin v. United States, R., 63 [Spanish], and R., 72 [translation].).

The petition which appears in the *expediente* in this case (San Rafael del Valle grant) is but a copy of the original petition which appears in the *expediente* of the Babocómari case, and in this copy all of the names of the original petitioners are erased save the name of Rafael Elias, and the petition is signed by Joaquin Elias for him. The copy of the petition as it appears attached to the *expediente* in this case (San Rafael del Valle), in the archives at Hermosillo, is as follows, its exact appearance, with the erasures and interlineations, being shown:

[Escrito.]

Rafael

Sor. Tesorero gral.—D. [Ygnacio] Elias [y D^a. Eulalia Elias], ante V. S. se presentan en devida forma y dicen que necesitando terreno para bienes de campo denuncian [en consorcio con D. Rafael Elias, Capitan D. Ygnacio Elias, y D. Nepomuceno Felix] el baldio que linda con el Rancho de San Pedro en la comprehension de Santa Cruz, hasta el punto de tres Alamos, obligandonos á satisfacer á la Nacion los dros que le correspondan con lo demas que fuese de justicia hta adquirir el titulo de merced y confirmation para cuyo efecto se hade servir V. S. hacer por registrado y denunciado dicho terreno baldio.—Por tanto á V. S. suplicamos se sirva

mandar proveer como solicitamos en lo que recibiremos merced. Arizpe 12, de Marzo de 1827.

Rafael

Por ausencia y ruego de D. [Ygnacio] Elias [the word "Rafael" is written on top of "Ygnacio" and not over it]. Joaquin Elias.—[Eulalia Elias.]

NOTE BY PRINTER.—Words inclosed in brackets [] erased in original.

The petition attached to the *expediente* in the archives at Hermosillo in the Boquillas y Nogales case (above referred to) is a copy of the original petition of the parties jointly for the "public lands adjacent to the ranch of San Pedro, within the jurisdiction of Santa Cruz, as far as the place called Tres Alamos," and is the same as in this case (San Rafael del Valle) without the erasures and interlineations, in neither of which is the petition attached to the *expediente* original.

This note of explanation will probably give a better understanding of the recitals in the act of obedience of the *alcalde*, Pablo Fraijo. (R., 106.)]

The *alcalde* proceeded to appoint counters, tallymen, and chainmen, and they were citizens Manrico Niera, José Samaniego, Manuel Soto, and Camilo Arvisu, who were duly qualified, and after examining the interested party and the adjacent owners, the survey proceeded. (R., 106.)

The proceedings of survey state that at the place called San Rafael del Valle, on the 21st day of August, 1827, in order to begin the survey of the lands to be taken up by the citizen Rafael Elias a cord of fifty *varas* was prepared and poles tied at either end. The center

point taken was at a place where "there are some small hills," and, taking the direction of the south, there were measured and counted two hundred cords, which ended at the limits of the San Pedro ranch, and the superintendent of said ranch being present, exhibited documents which showed that his survey extended up to that point, a monument of which standing there was taken as the boundary of one and the other of the interested parties.

After returning to the center monument, a northerly direction was taken, "measuring and counting two hundred cords, which ended upon a valley where there is a small calcareous knoll, where I ordered to be placed a heap of stones as a monument." (R., 107.)

Having again returned to the center, there were measured and counted toward the east fifty cords, "which ended upon a valley and fronting the Mule mountains, and where I put a heap of stones as a sign of a monument."

Having again returned to the center, there was measured toward the west fifty cords, which ended upon the same valley, fronting toward the Huachuca mountains, where there was put a heap of stones as a sign of a monument.

Having squared the measurements, there resulted four *sitios* for the raising of cattle and horses in favor of the aforesaid citizen, Rafael Elias, with which he was satisfied, and he took possession of the land so segregated, and was informed that at the proper time he was to mark his limits by monuments of stone and mortar, as provided by law. (R., 106-107.)

At the conclusion of the survey, the *testimonio* states that immediately thereafter the *alcalde* proceeded to the appraisement of the land through experts, who were Manuel Soto and Camilo Arvisu, who, having taken the oath in conformity with the superior regulations in the premises, adjudged the value of the four *sitios* to be two hundred and forty dollars, at the rate of sixty dollars each, because they had running water, and with this appraisement the *alcalde* put them up at auction, asking for bidders, for thirty consecutive days, from August 30 to September 28, 1827, and there being no bidders, the proceedings were closed. By order of the 30th of the same month, after summoning the interested party, the *alcalde* remitted the proceedings to the treasury-general, to be put up at auction, which by the decree of February 7, 1828, were placed before the fiscal attorney, whose opinion follows. (R., 107.)

The report of attorney-general Brena, dated February 7, 1828, states that there are extensive defects in the proceedings, but as they do not present any great obstacle he omits comment upon them, and says he "only finds it strange that no use was made of the compass in making the survey, as this instrument is indispensable to follow a route, so that to survey the land over again for want of this requisite is to enter into difficulties and greatly to injure the claimant, for which reason the fiscal attorney, there being no contestants that show any damage to third parties, is of the opinion that this fault be overlooked, and that the proceedings be continued to adjudication, according to the forms and requisites in use." (R., 108.)

The *testimonio* then states that the treasurer-general was satisfied with the foregoing report of the fiscal attorney, and by order of April 16 proceeded with the three public *almonedas* on the 16th, 17th, and 18th, asking for bidders, and there appearing none, the four *sitios* for raising cattle and horses at the place San Rafael del Valle were auctioned off in favor of Rafael Elias, as appears by the last *almoneda* which follows. (R., 108.)

The third *almoneda* recites that the board having convened, they proceeded to the last auction for the four *sitios* of land to which the prior proceedings referred, and there being no other bidder, the same was sold to Elias; further reciting, "in these terms these proceedings concluded, the four *sitios* of land for raising cattle and horses being publicly and solemnly auctioned off in favor of the interested party in the sum of two hundred and forty dollars, for which they were appraised," and the same is signed by the members of the board. (R., 108-109.)

A further recital is made that the attorney for Elias, Tiburcio Gomez, proceeded to pay into the treasury two hundred and forty dollars in which the four *sitios* at the place of San Rafael del Valle had been auctioned off as appears by the certificate which follows. (R., 109.)

The certificate of the treasurer-general states that he has entered in the book of the treasury for the current year, on folio 14, the charge for grant of lands, two hundred and forty dollars, paid by Don Tiburcio Gomez in the name of Don Rafael Elias, for the grant of four *sitios* of land for the raising of cattle and horses in the place named San Rafael del Valle, in the jurisdiction

of the *presidio* of Santa Cruz, each *sitio* having been appraised at the rate of sixty dollars on account of having running water; and the same is signed by Gaxiola and Tibureio Gomez. (R., 109.)

Then follows the certificate of the treasurer-general, Gaxiola, dated April 21, 1828, concluding the proceedings.

This concluded the proceedings for 1828, and so far as the *testimonio* is concerned, there is nothing appearing to show why title was not issued at that time.

Immediately following is the grant or patent by which the treasurer-general of the state of Sonora, on December 25, 1832, seeks to extend the title, stating that the proceedings were concluded with all the requisites and formalities provided by law and remained in the custody of the treasurer-general as a perpetual monument of title: Wherefore, in the exercise of the faculties conferred upon him by law, and in the name of the sovereign state of Sonora, he granted in due form of law the four *sitios* of land for the raising of cattle and horses comprised in the locality of San Rafael del Valle, situated in the jurisdiction of the *presidio* of Santa Cruz, in favor of the citizen, Rafael Elias, to whom he conceded, gave and adjudged the said land by way of sale, with the condition and permanency established by the law, for himself and his successors, with the injunction and condition that he must keep said *sitios* occupied and settled, without letting them be abandoned or deserted for any time, with the understanding that if they be abandoned for the period of three consecutive years, and there should be any person to petition for them, in such event, with previous proof made of the fact, they would be declared public lands

and granted anew to the highest bidder, excepting in such cases where the abandonment is caused by the notorious invasion of the public enemies, admonishing said Elias and his successors that they must keep and confine themselves to the lands and limits as marked precisely in the foregoing proceedings of survey, and comply exactly with article 30 of law No. 30 of May 20, 1825, which imposes obligations to mark the metes and boundaries with monuments of stone and mortar. (R., 109-110.)

Indorsed thereon is the following memorandum: "A memorandum of this present title is entered in the proper book kept in the archives of the treasury-general."

This title was evidently issued under and in pursuance of the order of governor Bustamante, dated Arizpe, April 29, 1833, which is numbered 762 (R., 111), wherein he states that there was auctioned off on April 18 and December 24, 1828, the properties of San Rafael del Valle, San Juan de las Boquillas y Nogales, and San Ygnacio del Bavocómari, situated in the jurisdiction of Santa Cruz, to the citizen Rafael Elias, owner of the first of said properties; Captain Ygnacio Elias Gonzales and Nepomuceno Felix, of the second; and Ygnacio and Eulalia Elias, for the third; having shown that it was no fault of theirs that the treasurer-general of the state that was once united had not issued them their respective titles, and from which office they demanded them anterior to July 10, 1830, he would proceed to issue said titles in accordance to what is provided in decree No. 27, of August 11, 1827.

We deem it proper at this point to call attention to the fact that Gaxiola, the treasurer-general in 1828, failed to issue the title, giving his reasons therefor in his communication of April 25, 1828 (Defendant's Exhibit "A," R., 199), wherein he states that the corresponding title could not be issued until the honorable congress determined the question propounded by the supreme government of the state in regard to the issue of these documents.

It is admitted on behalf of the government that the *expediente* of this grant is on file in the archives at Hermosillo and is in the usual form; that although the grant was dated December 25, 1832, the *toma de razon* was not made nor the title delivered until May 8, 1833. (See certificate of *toma de razon*, R., 112.)

It will be noticed from the petition for the grant and the survey that the location of the San Pedro ranch is important and necessary. It has been contended by the government that the location of the San Pedro grant is entirely within the republic of Mexico, and that there is an excess (*demasias*) over the *cabida legal* between the north line of said grant and the international boundary line. It is also contended by the government that the center monument, called for in the survey of the San Rafael del Valle grant, can not be found.

The case of *Robert Perrin v. United States*, No. 27, for the confirmation of the San Ygnacio del Babocómari grant, is in all respects, with the exception of the grantee and the land granted, similar to this case. In the *expediente* of the Babocómari grant appears the original peti-

tion, of which the petition in this case is a copy, with the erasures and interlineations, as before stated. In the Babocómari case, however, the survey is alleged to have been made by an "expert surveyor," appointed by the *alcalde*. The contentions on behalf of the government as to matters of law and fact are identical in both cases, save the additional contention by the government in the Babocómari case that the grant is void for want of proper description, and on account of inability to locate the same. In both cases it is contended that the grants have never been located, as provided by the sixth article of the treaty of 1853.

R. C. HOPKINS testified on behalf of the plaintiffs, and his testimony may be included in an admission by the government that the *expediente* on file is in the usual form; that the signatures, so far as the government is able to determine, are genuine; that the *toma de razon* of the same exists in the proper book in the proper archives. (R., 29-35.)

The plaintiffs introduced in evidence a large number of documents showing the deraignement of title from the original grantee to Camou. (R., 35.)

GEORGE G. ROSKRUGE testified on behalf of the plaintiffs that he has resided in Arizona for twenty-two years and has been a surveyor by occupation for twenty years. Made a survey of the tract of land known as the San Rafael del Valle grant in May or June, 1891, at the request of Mr. Camou. There were with him John W. Taylor, Ed. Wood, Douglas Snyder, and a portion of the time Max Marx; also the son of counsel, Mr. Herring, and Mr. Camou part of the time. He had a translation

of a certified copy of the *expediente* with him; went down the valley of the San Pedro river, covering a point from Charleston running south to San Pedro, in Mexico; went all over the valley and looked for what was described in the *expediente* as a hill or mountain in the center of the valley as a central point, which he failed to find; then went to the limy hill, where he finally found a monument on top and a post in it that had been set there and marked by Mr. Charles M. Allis, deputy United States surveyor, who made a survey of the grant for the United States government. This post which he found in the monument on the summit of the limy hill was the north center of the grant as called for in the *expediente*, and there was no other limy hill in the whole neighborhood. Witness states that he never saw anything located "differently" in his life. It looked like a lot of burnt lime, calcareous, or whatever it might be called. The whole top was covered with a limy formation, like cinders, and there were stones broken and fractured all around.

He ran from there north eighty-five degrees east six thousand two hundred and four feet to the summit of a hill where he found a monument. It was an old monument, which he took to be the monument of the grant, it being very near to what he would call at right angles to the center line of the grant coming up the valley.

He then came back to the limy hill and ran north eighty-one degrees west six thousand six hundred feet, where he found another monument of stone. It looked like an old monument, but it was not as high or as big as the one at the east.

Having found these two monuments, he next ran down the valley to find, if he could, from the papers he had, the north boundary of the ranch of San Pedro, which was called for in the *expediente* as being the southern boundary of the grant; chained down through the center of the valley; had a translation of the San Pedro grant and went to a monument that he supposed to be the center of the grant. That monument was a square-built monument, the best monument the witness had ever seen in Arizona except the boundary monuments. It was built of stones and had the appearance of being built by a mechanic and not thrown loosely together, but it was a regularly square-built monument. It was within the boundary of the United States. Witness then went to Ochoaville, where there were old ruins which he says answered the description called for in the *expediente* as going to the northeast; witness refers to the call in the San Pedro *expediente*. He found a lot of ruins on the bank of the San Pedro river and found an old monument of stones. Then he ran farther on toward the northeast and found two little hills. This old monument which he found at the San Pedro river he believes to be one of the monuments of the San Pedro grant as called for.

He then continued his line until he came to a place out from the valley which answered the description of the little hills, and they were the only little hills that he found in the whole valley that would answer the description. He then ran over and found a stone monument which is called for in the San Pedro *expediente*. Witness gives the caution here (R., 39): "I am running out

the San Pedro *expediente* now from the center north-east." He then went to the Bachata *cañon*, a point in the San Pedro, and had no difficulty in finding this *cañon*, which is large and well defined. There he found a monument, but not having a certified copy of the *expediente* with him at that time, and having no one with him who could tell him that it was the Bachata *cañon*, he left and came back to Tucson and notified counsel that he wanted a certified copy of the *expediente* and would return with witnesses who could tell him whether that was the Bachata *cañon* and whether those were the points called for in the *expediente*. Witness subsequently returned to the valley to continue his survey, and there appeared before him as witnesses to the name Bachata applied to the *cañon* an old Mexican by the name of Gonzales and another by the name of Concepcion Elias.

Mr. Douglass accompanied him on the second trip. He stated he went to the monument so well built, the center of the San Pedro, and asked the Mexicans what monument it was, to which they replied that they did not know, but it had been there a long time, ever since they could remember. Witness pointed to the line monument and asked them what it was, and they said it was a line monument; that one of the Mexican witnesses was a soldier when that monument was built; the square monument was there several years before the line monument was built. Witness asked them to take him to the ruins, and at the ford—crossing below the ruins—Mr. Snyder and himself chained the distance up to the old ruins. Saw no other old ruins in the valley except these.

He asked if there were any other old ruins in the valley, and the Mexicans replied that there were none, only away down below Fairbanks. At the request of the witness the Mexicans took him to the ford and said that it was the old crossing; they could trace the old ruins all over the ground. There was a Texan living on the bank of the river, having been there a long time, but he does not remember his name. From there they went over to the little hills, which could be seen from there—they were stony hills. Witness then requested the Mexicans to take him to the brushy place mentioned in the *expediente*, and as it was all brush they could not find anything, but they were sure *they were on the right track*. Witness asked them to take him to the Bachata Cañon, and they took him to the place where he had been before and said that it was the Bachata *cañon*. That gave him good reason to believe that he had found the northeast corner of the San Pedro grant. In the *cañon* they found an old big monument of stones, and in looking near it they could trace out that it had originally been a monument, built up square; but the foundation was coming out, similar to the other one, but that it had fallen down.

Witness produced a photograph of what he calls the initial monument of the San Pedro. The witness also presented a photograph of the little limy or calcareous hill. (Exhibits 9 and 10.)

Witness presented and identified photograph of the monument found in the Bachata *cañon*, being the northeast monument of the San Pedro grant, which was marked Exhibit 11.

Exhibit 12 was a view looking down the Bachata Cañon from the northeast corner of the San Pedro grant.

Exhibit 13 was a second view of the initial monument of the San Pedro grant.

Exhibit 14 was a photograph of the monument at the northeast corner of the San Rafael del Valle grant.

Exhibit 15 was a photograph of the northwest corner monument of the San Rafael de Valle grant.

Having found the Bachata monument and *cañon*, he then ran due west to the center of the valley, right to the San Pedro river, and, finding nothing, projected the line further west and searched on the plain, but could not find a single thing. Witness put a post on the north line of the San Pedro grant, which was used as a base line, which was 13,100 feet from the monument in the Bachata *cañon* down to the San Pedro river. He then ran from the north center down to this point, which he marked as the south center. Witness ran other lines between these all around the fences in the grant.

Witness produced and identified a photograph of the San Pedro grant monument on the rocky hill in front of the Sierra de Huachuca, marked Exhibit 16.

Exhibit 17 was a photograph produced by him "of hills on the east side of the San Pedro river, Pyatt's house at the foot of the hill, 'the line terminating in the valley at the skirt of a hill (quoting from the *expediente*), at the distance therefrom of three cords, where I caused a corner monument to be placed ;' it is looking southwest."

Exhibit 18 was a photograph produced and identified by the witness as of the "Sierra de Huachuca," from the

monument on the rocky hill in front of the Huachuca mountains.

Exhibit 19 was a photograph "showing the Huachuca mountains in the rear."

Exhibit 20 was a photograph produced and identified by the witness as "View looking from the post S. R. G. No. 8 to old N. E. corner monument of San Rafael del Valle P. L. C. monument on hill in center."

Statements were taken from the Mexican witnesses who were there by one of the counsel. There were also present Douglass Snyder and Mr. Marks, but he does not remember the others. (These statements were offered in evidence, but as the government had the witnesses present they were excluded.)

Witness made a calculation of the area within the lines which he surveyed and described, and it amounted to 20,034.62 acres; also made a map from the data which he obtained by this survey. Witness identifies the map and says it is a correct delineation of what he saw and found upon the various points described by him. (Exhibit 21, R., 196.)

This is the testimony in chief of Mr. Roskruge, who is the same gentleman who testified in the Sonoita case and made the survey, and in making it paid no attention to distances and quantity called for, and but little attention to the directions, and he evidently made this survey in the same manner.

On cross-examination, he states that he had the *expediente*; he undertook to retrace the steps of the prior survey, but he did not undertake to make the measurement, because, as he says, he could not find the center.

monument; he hunted all over the country for it without finding it, and is unable to explain why he did not go to the north line of the San Pedro grant to start with, in order to measure back and find the center monument. Witness states that in hunting the north line of the San Pedro grant to find the south boundary of the San Rafael del Valle, he located the line in the United States, and is satisfied that it is inside; thinks that the center monument of the San Pedro grant is half a mile inside of the United States line—that is, what he believes to be the center monument. He went to what he supposed to be the initial monument of the San Pedro grant, and his survey of the San Rafael del Valle is based upon the fact that he located this initial monument of the San Pedro grant in the United States. Witness is unwilling to admit that his survey is wrong provided the initial monument of the San Pedro grant should turn out to be ten miles south of the international boundary line. Witness did not find any limestone hills located along the San Pedro, and did not see anything which looked like them. He went all over the country down to where the custom-house is; went clear down to Mexico on the San Pedro ranch, but did not find any limestone hills there.

On further cross-examination, going over the *expediente* with the witness, he states (R., 45-46):

Q. Now let us go over the *expediente*. It says in the presence of the interested party the measurement was begun at a place where there were several small hills.

A. Yes, sir.

Q. Did you find that point?

A. That is the point I told you I did not find.

Q. You did not?

A. No, sir.

Q. Then, "continuing a south course, there were measured and counted two hundred cords, the line terminating at the line of the *rancho* of San Pedro;" did you find the *rancho* of San Pedro near that line?

A. I found the *rancho* of San Pedro away down in Mexico.

Q. Did you undertake to find whether there were some small hills north of that? You say you found the *rancho* San Pedro south of the line.

A. I found a ranch called San Pedro; yes, sir.

Q. And did you find any small hills north of that ranch?

A. I don't recollect of any small hills north of that ranch until I come up this side of the line, probably about a mile, and then there were some small hills.

Q. Would they have answered this call?

A. Well, it would have been a terrible stretch if they did.

Q. Wouldn't they come as near answering this call as a pile of stones answers your monuments out there?

A. No, sir.

Q. How far did you continue north before you located these hills?

A. Which do you refer to?

Q. I am speaking of the small hills at which the survey is located.

A. I never found any.

Q. There were some small hills north of the San Pedro ranch—as you found the ranch in Mexico—at the time.

A. Yes, sir.

Q. (Reading:) "And in his name was present the administrator of said *rancho*, with documents showing that his measurement extended to that point, etc. Returning to the center, the course was run to the north two hundred cords, which terminated in the same valley at a point where there is a small limy hill." Now, how far north from the San Pedro ranch do you locate this small limestone hill?

A. As near as I can tell, probably a good twenty-five miles from the San Pedro ranch.

Q. And that you take as the north center monument?

A. Yes, sir; that is what I take it for and believe it to be.

Q. Twenty-five miles north of the San Pedro ranch you found a little limestone hill (interrupted) —

By Mr. HERRING:

Q. Are you speaking of the ranch or the ranch house now?

A. I am talking about the San Pedro custom-house. That is the only San Pedro I know. That is eight or ten miles below the line, where Mr. Elias lives.

Witness states the little limestone hill is fifteen or twenty miles north of the international boundary line. He found a monument there, and at that point was twenty-five miles north from the ranch house of the San Pedro ranch. States that he hunted for the monument which the *expediente* says was fifty cords east from the center and terminating in the valley in front of the Mule mountains, but did not find it. He believes that he ran a line and it brought him somewhere on the *mesa*. The Mule mountains were eight or ten miles away and he did not

find any pile of stones there. The west center monument which the *expediente* locates as fifty cords west of the center terminating in the same valley, in front of the *cordillera* of the Sierra de Huachuca, at which place a pile of stones was placed for a monument, he did not find, although they all hunted for it. He ran a line from the north center monument fifty cords west, but he did not find the monument.

As to the manner in which he made his survey, he says he came down the river and ran a line from the limy hill south on his plat, and taking the distance called for in the *expediente*, fifty cords, measuring them out, he drew his lines from the northeast and southeast down, showing what he believed to be the land covered by that *expediente* between the San Pedro and the limy hill, and that he paid no attention to the area designated in the *expediente*. Says he designated the first course that he laid off from the north center monument by platting and had no instrument. He ran down on Allis's course ten and a half miles and found the place for the monument and checked back on it, and from there he ran farther south, connecting with a flag that he left on the bank of the river, which he put there after running east from the Bachata *cáñon*. He took as a basis for his survey the monument established by Mr. Allis with a pole in it, on the top of a hill.

Witness states that he established the subordinate points, but was unable to establish the initial point; he did not try to establish it, however, but looked all over the country for it and did not find it as described in the

expediente. As a matter of fact, he states that he could not find any such initial monument as called for in the *expediente* in the valley of San Pedro and included within his survey; says the *expediente* is without any initial point so far as he is able to determine; at least, he could not find it. Witness attempted to find the little hills called for as the center monument, going up the San Pedro valley toward the ranch, and the only ones he could find were those called for in the San Pedro grant, the second course from the ford, and he supposed they were one of the monuments of the San Pedro ranch; says he could not tell anything along the whole valley that would answer the calls for the initial point; that he did not determine the north center monument by any measure, but just took it arbitrarily and went right to it, as he could not get a measurement from anywhere. He did not run the outside lines of the grant; he simply ran the end lines and then squared it. Says he believes the San Pedro grant is in Arizona; he knows where it is down below. Elias had leased a lot of land on this side of the line and Mrs. Elias told him the north line of the San Pedro grant was above Hereford. Taking the *expediente*, witness says if it were necessary for him to establish the initial point, he could not make the survey. (R., 36-55.)

IGNACIO BONILLAS testified on behalf of the petitioners that he was a mining engineer and surveyor and had been for eleven years in the state of Sonora and in the territory of Arizona. Knows the international boundary line as it runs between the Huachuca mountains on the west and the Mule mountains on the east, and he finds that

the line runs through the southern extremity of the Huachuca mountains and does not touch the Mule mountains at all, leaving them to the north.

Being made the witness of the United States, he testified that he had made a survey of the San Pedro Palominas ranch, lying south of the line; that his survey was simply a resurvey of the survey made by Pedro Bamolera and he used his map and field notes, AND LOCATED THE RANCH SOUTH OF THE INTERNATIONAL BOUNDARY LINE. There was a surplus or *demasias* south of this line. Witness identifies a map made by himself and states that it is correct, showing the location of the San Pedro ranch as Mr. Bamolera gave it and according to the resurvey which he made of it.

Going down the San Pedro river, he states, there is a row of hills, which he would call *lomas*, along the river, but not all the way; they are located in different places, but not continuously; they come up to the international boundary line and they are along the San Pedro river, which runs up into Arizona. Witness's map (above referred to) is a correct location of his resurvey, and the lines were verified by himself. He states that he found some mistakes in the original survey and that was the reason he was appointed to make the resurvey; that THE SAN PEDRO GRANT AS LOCATED BY BAMOLERA, AND RELOCATED BY HIM, IS ENTIRELY WITHIN OLD MEXICO, AND THE MAP IS CORRECT. This map was offered in evidence by the government and will be found in the record. (P. 200.)

On cross-examination he states that he did not have the *expediente* of the San Pedro grant with him, and did

not pretend to locate the calls of that grant, and does not know whether the map locates them as described in the *expediente*; he was appointed simply to run certain lines of and correct the survey previously made, and does not know whether the map in any respect locates the calls of the grant as expressed in the *expediente*, but says it is correct as to the distances and courses marked on it; has no recollection where and what the natural monument called for in the San Pedro grant is. Does not know of any other San Pedro grant in that vicinity on the San Pedro river. The original grant, or *cabida legal*, is supposed to be four leagues. Witness translates the term "*cabida legal*" to mean the area called for in the title papers of the grant. (R., 55-59.)

DOUGLASS SNYDER testified on behalf of the plaintiffs that he resided in Tucson, and in 1891 went with Roskruge to assist in the survey of the San Rafael del Valle grant. There were also there the parties known as Concepción Elias and Antonio Gonzales. They were attempting to locate either the south end of the San Rafael del Valle or the north end of the San Pedro grant. When the two Mexicans came they took them over to an old monument, partly fallen down, close to the boundary line, whereupon Roskruge asked them what that monument was, and they replied they did not know. He asked when it was put there, and he thinks Gonzales replied that he was a soldier at the time the boundary was established, and that monument was there long before that. Roskruge asked them to take them to the old ford, and they went a little beyond Ochoa-ville to the old ford, where they crossed the river and

skirted along the small hills that lie to the east from the river, and finally arrived at what they called the Bachata *cañon*, and on the bank of it found quite a large monument, built of rock, which had the appearance of being built there a very long time, judging from the drift and vegetation banked around it. Witness says he has been out frequently before with surveying parties.

On cross-examination the witness states that he does not know how far this *cañon* is from the international boundary monument. After they crossed the river, they rode along on horseback in the brush for an hour and a half or two hours; that is as near as he could come to the distance. The old monument which was partially fallen down is probably a quarter of a mile from the international boundary line, which is in plain sight looking diagonally across the valley. The monument found in the Bachata *cañon* was a pile of stones. He has seen similar piles scattered over the country, but not many. Witness describes this monument as a large monument and he could not conceive why it was there. It was a good-sized monument and quite large. The stones were large at the bottom and smaller as you got to the top. At the bottom were big bowlders, probably eighteen inches in size. (R., 59-62.)

MAX MARKS testified on behalf of the plaintiffs that he lives in Sonora, but formerly lived at Tucson, in Arizona, and knows Roskruge and Douglass Snyder; was with Roskruge in 1892 on the survey and knows the country pretty well; lived for five years at the San Pedro custom-house; remembers the two Mexicans, Concepción Elias and Antonio Gonzales, being present.

When they came, the party went to what they believed to be the center initial monument of the San Pedro grant. From there they went down toward what was pointed out as the old ford, on the west bank of which, before they crossed, they found an old monument which the *expediente* of the San Pedro grant calls for. They crossed the river, and there were some small hills on the east side of it, and from there they went to a rocky hill where they found a monument of stones; and from there the Mexicans took them up to what was called the Bachata *cañon*, to which they had requested them to take them. Roskruge and the witness rode ahead and were down in the *cañon*, and riding up the south bank a little ways they found the monument. This was after the *cañon* had been pointed out to them by the Mexicans. The Bachata monument the witness describes as very large; it was not as high then as when new, having toppled over, but the base looked as well put up as when it was first placed there.

On cross-examination witness stated he went after these two Mexicans down in Sonora and found them at Santa Cruz, thirty miles away, and accounts for his securing them because he was around the Bachata *cañon* and a Mr. Green told him that he thought it was the Bachata *cañon*, but would not be sure of it; so he tried to find men who knew it was the Bachata *cañon*, and at San Pedro he was informed that he might find them at Santa Cruz, as there were old men there that used to live on the ranch; so he went after them and found these two men who could show him the Bachata *cañon*. They told him they knew exactly where it was, so he brought

them up. They went to find the Bachata *cañon* because they were trying to establish the San Pedro grant, and it was one of the main points because it was a natural object. Witness was shown photographic Exhibit 13, and says he thinks it is the center monument of the San Pedro grant, but it is possible it may be the Bachata *cañon*, having only seen the picture but once before. That monument is in the United States; he could not tell the exact distance inside of the line, but from half a mile to a mile perhaps. (R., 62-64.)

CHRISTOPHER LAYTON testified on behalf of the defendants that he first came into the valley of the San Pedro in 1846, when a member of an expedition of five hundred men, independent of the officers. They came in through San Bernardino Pass, quite a distance above Contention, and went down the valley, leaving it about two miles below where the Babocómari stream comes in. Their expedition sometimes would cover a considerable stretch of territory, and there was no one living in the San Pedro valley at the time, and he never saw any signs of anyone. (R., 65.)

P. C. MERRILL testified on behalf of the defendants that he first came into the San Pedro valley in 1846, and since that time had been familiar with the valley from Benson to the international boundary line. Found no one living in the valley at the time he first came there. He came back to the valley again in 1877, and they made a halt at the Huachuca mountains, Gardiner's ranch, and found a company of United States soldiers and officers at what is now called Huachuca fort; from there they kept on south near the end of the Huachuca mountains,

and he learned the names then. He came to a monument between the two republics which was very prominent and easily discovered. From information he had received from general Wasson he was very pointed in those matters. After coming to the monument he turned around and went down the valley as far as Tres Alamos, which is about four miles from the international boundary line. There was nobody living there at the time.

On cross-examination he states that the only person whom he met in going through the valley was a man by the name of Landers, who was not an actual settler any more than he was. This was in 1877. Knew a man by the name of J. H. Slaughter, who was sheriff of Cochise county, but he did not see his house or any other house in the valley in 1877, and to the best of his recollection there was no house in the San Pedro valley then. (R., 66-69.)

HENRY O. FLIPPER testified on behalf of the defendant that he was a civil engineer and employed at the time as special agent of the Department of Justice; that he was familiar with the Spanish language and had had eleven years' experience in surveying Spanish and Mexican grants in Mexico and in examining the archives and records of those grants; that he had examined the documents in the archives at Hermosillo, state of Sonora, Mexico, in relation to this grant; that the matrix or *expediente* is in the archives; that the *expediente* begins with a petition by Ygnacio Elias and Eulalia Elias, in company with Rafael Elias, captain Don Ygnacio Elias, and Nepomuceno Felix, signed by Joaquin Elias, Rafael

Elias, and Eulalia Elias; that the word "Ygnacio" is erased and "Rafael" written over it; that the Spanish words for "and Dona Eulalia Elias" and for "in company with D. Rafael Elias, captain Don Ygnacio Elias, and D. Nepomuceno Felix" have been crossed out; that in the signatures "Rafael" has been written on top of "Ygnacio" and "Eulalia Elias" crossed out; that this petition is a copy and not original; that the usual statement that the petition is admitted is omitted; that the order of Gaxiola appointing the surveyor is a copy, including the signature of Gaxiola; that the application, act of obedience, appointment of assistants, and the examination of the ground, survey and appraisement, the *pregones* (publications), order to approve ability to stock, etc., the declaration of witnesses, act of conclusion, and notification of Elias, are all in the same handwriting; that the signatures to the petition are all in the same handwriting, and that handwriting is the same as in the body of those writings; that the three *almonedas* (public offers of sale) are signed by treasurer-general Gaxiola, but not by the attorney-general, Manuel Brena; that there is a certificate of payment for two hundred and forty dollars, but nothing about the usual fees for title; that there is attached to the *expediente* a copy of the certificate read in the Babocómari case to the effect that the state government had consulted the supreme government and reply was awaited before the title would be issued; that an indorsement on the *expediente* stated that title was issued December 25, 1832, and that there was a *toma de razon* in the proper book, stating that title was issued to Rafael Elias Gonzales.

Mr. Flipper also testified that he had examined the large monument described by Mr. Roskruge; that it was a monument on the international boundary line, built in 1853 or 1854 by the American Boundary Commission; that he knows it was such because it was so marked when he was there in 1885; that the history of this monument is given in the report of Major Emory, and is that the American commission built it as on the line, and that when the Mexican commission arrived later it was unable to find this monument and built another about a quarter of a mile farther west; that he had retraced the line and knows where both of them are.

Witness further testified that he had investigated this grant on the ground, having a copy of the *titulo* and claimants' map; that he went to the north center monument, which is a post set in a pile of limestone on top of a small hill; that he went thence south down the valley hunting for the center or initial monument, but was unable to find it, as there was no place he could identify as being the place described in the *expediente*; that he went to the place marked on claimants' map as the south center monument, but could not find it; that he went all over the ground laid down on that map, but could find no monument or anything resembling one; that he took a man from Mr. Green's ranch there and went to the southwest corner, where there is a fence but no monument, the man saying the corner is supposed to be where the fence is, but there is none there nor anywhere in the vicinity; that he went to the southeast corner, but was unable to find anything marking that corner, although he

ran out the full length of the south line from the corner of that fence; that the line he ran out was the south line as laid down on the Roskruge map; that he then returned to the north center monument on the small limy hill and went west to the northwest corner, where he found a stake which he knew to be a corner of the Wasson survey, unlike the one described on the Roskruge map; that he searched north, east, south, and west of that stake for the monument described on the map, but found nothing; that he then went to the northeast corner and there found a Wasson stake, but not the monument described on the map, although he made diligent search for it in all directions; that he investigated the valley with reference to small hills from the San Pedro ranch down; that where the north center monument is the valley narrows considerably and that this hill is on the eastern edge of the hills on the west side of the river; that the whole country there is a limestone formation, and some five or six miles south the *mesa* or table-land runs out into the valley again and forms two or three small hills there; that the word "hill" in the original is "*loma*," and all these are "*lomas*," and that the word "hill" does not exactly translate "*loma*"; that there are similar hills south of the line along the San Pedro river; that the center or initial point is described as being a small hill in the valley, and that there is no such hill anywhere in the valley between the table-lands on both sides; that he did not go to the Bachata *cañon*; did not examine the San Pedro grant at all; that the Huachuca mountains

lie west of the river, are probably twenty or twenty-five miles long, run a little north or west from where the boundary line crosses them, and at the west end are probably ten or fifteen miles wide; that the Mule mountains are on the opposite side of the river and do not cross the boundary line, starting some three or four miles from it, the foothills running down to the line; that the east end of the Huachuea mountains cross the line, the line running over a spur of the mountain; that that range does not have the same general tendency as the river, up and down, but run from the river, diverge toward the west from south to north; that the river runs a little west of north; that the mountains diverge more than the river does, from their southern end toward the west; that he located the north center monument from the Wasson and Roskruge maps, and had no other means of locating it; that he could not find the initial point described in the *expediente*, although he made special search for it; that he could not take any of the subpoints and work back from one to the other and locate the initial point; that if the four hundred cords were run out from the north center monument they would not reach what is laid down on the Roskruge map as the north line of the San Pedro grant by at least ten miles; that if the four leagues were run out from the north line of the San Pedro grant, as laid down on this map, they would not reach the north center monument, and that he could not take the *expediente* and go and locate the initial point and survey this grant. (R., 69-74.)

On cross-examination, Mr. Flipper testified that he was accompanied in his investigation of this grant by Mr. Burnett and Mr. Haviland, and also by Mr. Herrick and another man; that the monument described by him as the United States boundary monument had "W. H. E., U. S." on the north side and the initials of the Mexican commissioner on the south side; that there are two such monuments, the south one being on the east side and the north one on the west side of the river, both built by the boundary commissions; that he did not go on the grant to survey it, but to find and identify the monuments if possible. (R., 74-82.)

On redirect examination, witness testified that in his travels over the country investigating land claims in Arizona he had never seen a monument built of stones and mortar by Mexican officials, and such monuments as he had seen are modern.

On recross-examination, he testified that his reason for believing the monuments to be modern rests on the appearance of the stones in the monument. When a stone lies on the ground the upper side acquires a color different from that of the under side, and when such stones are removed and placed in a monument the fact that they had recently been placed there is apparent from the color of that side that had laid next to the ground, and that by "modern" he means ten or fifteen years, and certainly not prior to 1853. (R., 83.)

MAX MARKS was recalled for the purpose of identifying the photograph of the initial monument of the San Pedro grant (R., 84), as also was Douglass Snyder (R., 86).

GEORGE J. ROSKRUGE was recalled on behalf of the plaintiff to further identify the photograph of what he designates as the initial monument of the San Pedro grant, and says there were no cuttings or markings on any of the stones of that monument. The remainder of his testimony is with reference to the location of the mountains and Major Emory's survey of the international boundary line and the controversy between him and the Mexican commissioner resulting in the change of the monument, which the United States contends accounts for the second monument which Roskruge and his confreres located as the north center monument of the San Pedro grant. (R., 87-92.)

THOMAS A. BORTON testified, on behalf of the plaintiff, that he resides at Tucson and has lived there since 1872; was employed in the surveyor-general's office in the years 1881 and 1882, and again in 1887. While so employed he was instructed to make the measurements in Cochise county for the boundary line. Witness had occasion to measure the distances between what is known as the town or location of Hereford, on the San Pedro river, and the boundary line, in January, 1887. The measurement was made by an odometer, and the distance between these two points was something over seven miles by the road.

On cross-examination, he states that he went there to locate the initial point of the San Pedro private land claim, BUT HE COULD NOT AND DID NOT LOCATE IT WITHIN THE UNITED STATES, and he had no authority to cross the line.

On redirect examination, he states, in answer to a question why he did not locate it, that he had a copy of the

expediente there with him, but owing to the indefiniteness of the description of the calls of the grant it was impossible for him to locate the initial point where the claimants asserted it was in their petition for the preliminary survey and in the map filed by them showing the initial point; and it became necessary for the surveyor-general to send the witness to make an investigation to ascertain where the initial point was, and from this data he was unable to locate it. On recross-examination he states he was unable to locate it within the United States. (R., 92-93.)

Counsel for plaintiff then offered the documentary evidence as shown in the record.

This was all the testimony in the case.

BRIEF AND ARGUMENT.

This grant (San Rafael del Valle), the Babocó mari grant (*Perrin v. United States*, No. 30), and the Boquillas y Nogales grant (a suit for the confirmation of which is now pending before the Court of Private Land Claims) were all made under the same petition for "the vacant tract of land adjoining the ranch of San Pedro, situated in the jurisdiction of the *presidio* of Santa Cruz, as far as the place of Tres Alamos." The dates at which the surveys and intermediate proceedings leading up to the grant were had are a few days apart, but in all respects they are substantially the same. The legal questions involved in the case relate purely and simply to the power of the states to dispose of the public lands within their respective demarcations, under authority from the national government.

I.

It will be noticed that the right to dispose of the vacant public lands is based upon the provisions of the law of August 4, 1824, classifying the revenues between the nation and states (Reynolds, 118). It has been contended that the states were originally the owners of the vacant public lands within their respective demarcations, as were the original thirteen colonies of this country, but I do not deem this proposition of sufficient importance to notice the same any further than I have done in the briefs and arguments in the case of *United States v. Coe* (Algodones grant), No. 8, on the present docket, for reargument. I have had occasion in that case to discuss the state grant question at length, and incidentally in the case of *United States v. Maish et al.* (Canoa grant), No. 297, on the present docket. I have contended that the law of August 4, 1824, classifying the revenues, had no application, directly or indirectly, to the vacant public lands of the nation, whether they were situated in the state or territories, but that the policy of the government was well-defined in the law of August 18, 1824, and to that law alone must the states look for their authority to intervene in any manner in the matter of the disposition of the vacant public lands.

I think that much of the confusion now appearing in determining the legality of the acts of officials of the state of Sonora in disposing of the vacant public lands under its laws of May 20, 1825 (*ibid*, 129), and July 11, 1834 (*ibid*, 186), arises out of the fact that by the third article of the colonization law of August 18, 1824

(*ibid.*, 121), the states were authorized, under the control of the national government, to provide rules and regulations for the colonization of the vacant public lands of the nation within their respective demarcations, subject to the constitutive act, the constitution and the regulations provided under that law. The fact that the state of Sonora was permitted, without challenge by the national government, to dispose of the vacant public lands belonging to the nation within its boundaries for a number of years, can be reconciled upon the idea that the national government realized that the state had authority delegated to it to regulate the colonization of the same; not upon the idea that the absolute title to the same was in the state, nor that it could dispose of them without restriction or limitation. No state of the federation, so far as I have been able to discover, ever claimed the right to dispose of the vacant public lands of the nation except under the provisions of the third article of the colonization law referred to. It is true that in some of them in regulating the colonization of the lands they also incidentally provided for a compensation to be paid to the state for the lands, but in no instance was colonization defeated or compromised by revenue being made the principal consideration for their disposition.

So far as I am able to determine, it is now contended that the two laws of the state of Sonora, before referred to, of 1825 and 1834 (*ibid.*, 129 and 186), were not intended to carry out the plan and purpose of the national government in delegating to the states the right to regulate the disposition of the vacant public lands by colonization. The national government realizing that the

pretensions of the states, based upon the authority that had been granted them under the third article of the colonization law to regulate the disposition of the public lands, were growing serious and dangerous, and that the objects and purposes of that law were liable to be defeated, sought by the law of April 6, 1830 (*ibid.*, 148), to peaceably withdraw from the states the powers it had delegated to them under said article. The attempt to do this resulted in the rebellion and secession of Texas, and subsequently in the rebellion of Sonora.

The secession of Texas never had for its cause, in whole or in part, a grievance against the national government originating out of the attempted withdrawal of any rights which it had obtained under the revenue law of August 4, 1824. Texas made good by force her claim to dispose of the public lands; Sonora was compelled to submit to the superior contentions of the national government, and under the constitution of 1836 (*ibid.*, 203), she lost her autonomy as a state, and became one of the ordinary departments of the national government, subject to its absolute and unconditional control in all matters.

Subsequent to this constitution, it can hardly be contended that any state of the union had any right to dispose of the vacant public lands within its demarcations, either for revenue or for colonization, but the whole matter was withdrawn from them, and thereafter regulated and controlled by the national government, as I have attempted to show in my brief in the case of *United States v. Maish et al.*, No. 30, on the present docket.

This grant was initiated in conjunction with two others, to-wit, the Babocó mari and Boquillas y Nogales grants. Final title was not issued until May 8, 1833, at a time when it was evident that the extravagant pretensions of the states were to be tested by force of arms, and such men as José María Mendoza were not to be commended for their loyalty to the national government, as it appears by the various grants and documents to which this court's attention has been called that his actions and position politically were largely governed by the necessities of the times and his situation.

It is true that many titles have been made under the laws of the state of Sonora that apparently were not immediately questioned, but when we take into consideration the revolutionary condition of Mexico and the repeated changes in its form of government from 1835 to 1846 it is not surprising that little or no attention was paid to the condition of land titles in such a distant state as Sonora, which was one of the frontier states. The fact that revolutionary officials, holding offices both federal and state, were attempting to bind the national government in favor of the states by admissions is only to subject them to the condemnation of every observing lawyer and bring to their acts the censure which was subsequently imposed by the Mexican nation. This is particularly applicable to the acts of the revolutionary officials in Sonora.

It appears that, although being compelled to submit to the national constitution of 1836, a revolutionary decla-

ration was made on December 26, 1837, and entered in the records of the state. It is as follows:

NOTE.—The grant title for lands which shall be issued hereafter from this date shall be signed and authenticated by the treasurer-general of the state, because the government of the department has declared to-day for federal institutions, the treasury-general, in consequence, being established in conformity with its own laws, and the office of superior chief of the treasury, created by general decree of the 17th of last April, being suppressed.

Arizpe, December 26, 1837.

(Signed) TRELLES. (Rubric.)

See official report of special agents, etc., p. 69.

We have never been able to find a single instance where a grant similar to this, initiated and completed as a state grant, has ever been called to the attention of the national government and acted upon and confirmed by any official authorized to act for and bind the national government thereby.

The only instance that appears, so far as our investigations have gone, in which the national government by an officer located anywhere save in the state of Sonora made any declaration as to the validity of such titles as this is to be found in the declaration of Santa Ana of November 25, 1853. (Reynolds, 324.) No *so-called* attorney-general of the Mexican nation ever pronounced one of these titles good and valid, either as a matter of law or form, and it is not likely that an opinion as to the validity of one of these titles would have been promulgated by the legal adviser of the secretary of the

treasury of the Mexican nation, to whom alone was given jurisdiction in the matter. The fact that all of such grants were required either prior or subsequent to the treaty to be presented for reinvestigation and validation shows conclusively that they were not recognized by the Mexican nation, as expressed and declared through its superior powers, as valid and subsisting complete titles, even though such men as José María Mendoza might have attempted to make the contrary appear by their admissions against the nation while acting as its officials.

Unless the court shall hold that the law of August 4, 1824, passed to the state an absolute title to the vacant public lands within their respective demarcations, these titles can not meet the requirements of the laws of the Mexican nation or the provisions of the act of March 3, 1891, creating the Court of Private Land Claims.

The necessity for the law of November 25, 1853 (*Ibid.*, 324), as promulgated by Santa Ana, and those subsequent thereto in relation to this character of grants, was brought about by a disclosure of the extravagant pretensions of the officers who were professing to represent the national government in the state of Sonora, when, as a matter of fact, they were attempting to carry out the wishes and objects of a disloyal community in despoiling the nation of its property. The effect of these laws I have considered in the cases of *United States v. Coe*, No. 8 on the present docket, and *United States v. Maish et al.*, No. 297, and I will not burden the attention of the court by an unnecessary reiteration of the views therein expressed.

The discussion of these same questions equally apply to the case of *Perrin v. United States*, No. 30 on the present docket, and in my brief in that case I shall only refer to this.

In concluding this subject, I contend that the grant in this case and the Babocómari grant are invalid for want of authority on the part of the states and officials acting under their laws to dispose of the public lands as they have attempted to do, and that such action has not been affirmed, ratified, or approved by any branch of the national government of Mexico possessing authority in the matter.

II.

It is contended on behalf of the government that this grant comes within the principle announced in the case of *AINSA v. UNITED STATES* (161 U.S., 208), in this, that it had not been located at the date of the treaty. It is not my intention to burden the court with a lengthy discussion of this proposition, and I only desire to call to their attention the fact, as before stated, that the petitions in this (San Rafael del Valle) grant, in the Babocómari grant, and the Boquillas y Nogales grant asked for the same land, the land from the ranch of San Pedro to the place of Tres Alamos; and under the state law it was necessary to limit the purchasers of land to a certain quantity (article 21, law of May 20, 1825, Reynolds, 130), taking into consideration their ability to stock and reduce the same to absolute dominion (article 24, *ibid.*), and in the surveys made it is not pretended that all of

the land between the ranch of San Pedro and Tres Alamos was included within the outboundaries of these three grants by natural objects, as extravagantly claimed.

It was necessary to locate the north boundary of the San Pedro grant, and this has not been done, except possibly by the United States in the testimony of Mr. Bonillas (R., 56, 57); and by reference to the map offered in evidence by the United States, which Mr. Bonillas showed was correct (see R., 200), the north line of the San Pedro will be located (by scaling) about five miles south of the international boundary line.

The survey of the land of the San Rafael del Valle grant, according to the calls of the *expediente*, included within the exterior boundaries by natural objects and monuments (piles of stones) a greater area than sold or granted, and, as said by Mr. Chief Justice Fuller, in the opinion of the court in the Ainsa case (161 U.S., 208-221), "Grants which have not been located would seem manifestly to be grants of a specific quantity of land within exterior boundaries containing a larger quantity of land. This was a familiar class of Mexican grants."

The proceedings for the reclamation of the *demasias*, both under the Spanish and Mexican governments, together with the laws of the state of Sonora of May 20, 1825, and July 11, 1834 (Reynolds, 129, 186), fixed beyond controversy that no title could be passed against the government for anything except the *cabida legal*, which is translated by Mr. Bonillas as "the area called for in the title papers" (R., 59, line 22), and the Mexican government has reclaimed the excess in all grants,

no matter when made, over and above the *cabida legal*. The application of these laws and the decision of the court just referred to must result in the determination that the grant had not been located at the date of the treaty.

Whatever grounds for the rejection of this grant may be stated in the opinion of the majority of the court below, I respectfully contend that it should be rejected because it had not been located at the date of the treaty, and on the broader ground that it has not been "lawfully and regularly derived from the government of Spain or Mexico, or from any of the states of the republic of Mexico having lawful authority to make grants of land."

It is respectfully submitted that the judgment of the Court of Private Land Claims should be affirmed.

JOHN K. RICHARDS,
Solicitor-General.

MATTHEW G. REYNOLDS,
Special Assistant to the Attorney-General.

